# RETHINKING EXPORT CONTROLS

Testimony by John W. Douglass, President and CEO
Aerospace Industries Association
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Mr. Chairman:

I am John Douglass, President and CEO of the Aerospace Industries Association. I am pleased to have this opportunity to explain the impact of export controls on our industry (and our nation), with particular reference to S.1712, the Export Administration Act (EAA) of 1999. AIA is the trade association that represents the major manufacturers of commercial and military aircraft, helicopters, missiles, satellites, engines, and related aerospace subsystems. Our industry produced $155 billion of aerospace products last year, and currently employs over 800,000 Americans (in high-tech, well-paying positions).

We welcome your hearings this morning. We are very concerned that if we do not revamp our export control system, we will weaken the very industries that produce the technology on which U.S. security depends. I would like to suggest short-term and long-term changes to our system that would more fully protect U.S security interests, while, at the same time, promote the economic health of our industry.

## Background

During the Cold War, the U.S. was willing to sacrifice economic interests for the sake of limiting the ability of the Soviet Union to improve its military capabilities and to discourage other countries from joining the Soviet camp (or punishing those that did). This was also true of other industrial democracies who recognized the Soviet threat and the importance of the U.S. nuclear umbrella. We were able to obtain relative consensus on the importance of keeping a variety of technologies from the Soviet Union that would directly help them build their weapons systems, or improve their economy to support a larger military establishment.

It was also true that new advanced technologies generally originated from government supported military research first applied to military projects. These included such technologies as radar, nuclear energy, computers, lasers, sensors, satellites, and advanced materials. These technologies gradually migrated to the civilian sector. Technology and plans for hardware were generally recorded and transferred on paper.

The Soviet Union has now collapsed. There is greater awareness that both the economic welfare and security of countries in the future will increasingly depend on their ability to compete in the global marketplace. There is little consensus among our fellow industrial democracies as to how to deal with countries such as Russia and China; those countries themselves have become both purchasers and suppliers of advanced technology. In particular, China has become an important market for many countries, and is regarded as one that will steadily expand. The tradeoff between security and economic benefits has become more complex.

At the same time, the distinction between military and commercial products has become less clear. The military is expanding the share of its budget that goes into such activities as communications, data processing, imaging, and simulation -- all areas of accelerated commercial activity. Furthermore, in order to hold costs down, the military must turn to standard, or near standard commercial products to meet many of these needs. But lower costs and rapid technological innovation in the commercial sector are only possible for companies producing for a global marketplace, with the flexibility to rapidly penetrate new markets and to take on foreign partners.

These changes are reflected in the aerospace industry. Ten years ago, more than 50 percent of our business was with the Department of Defense. The U.S. government, as a whole, accounted for three-fifths of our sales. Today the government accounts for about 35 percent of our sales, and of the remainder; foreign sales account for two thirds. Commercial space activity is our fastest growing sector, with sales having jumped from 1 to 5 percent of sales in the past decade.

Increasingly, the Department of Defense looks to our commercial research, development, and products to meet its needs, and to our foreign sales of military equipment to keep crucial defense lines open and to reduce unit costs to the U.S. military. Ten years ago we exported only 7 percent of our military aerospace output; last year we exported nearly one-third. Most of you are aware that a number of assembly lines for mature products are kept open primarily because of foreign sales. Those sales, in turn, also mean that the U.S. military has the option of purchasing limited numbers of attrition aircraft that would be unaffordable without the foreign sales. Those sales also help maintain our subcontractor base and skilled workforce, both of which will be needed as we move into production such new weapons systems as the F/A-18E/F, F-22, Commanche, V-22, etc.

Finally, the pace of high technology business has increased enormously. Designers work on common electronic bases in real time, often in several companies and several countries. Improved production techniques have reduced the time needed from order to delivery – in the case of commercial aircraft from three years to eighteen months -- with a current target of nine months. Commercial companies, and increasingly the military, expect contractors to hold inventories and deliver parts anywhere in the world within 48 hours. Information is no longer transmitted on paper, but through nearly instantaneous electronic communication.

The philosophical underpinnings, legal structure, and administrative framework for U.S. export controls, which are intended to deal with such technology, have not changed at a comparable pace. As a result, there are too many export licenses required and too many agencies involved in the review and administration of such licenses, and the process takes far too long.

I believe there are short- term and long- term fixes we can make. One short- term fix is to move forward on S. 1712, The Export Administration Act of 1999. We believe the Senate bill is helpful in several ways. First, it is bad government to have a law in suspension for half a decade. It also makes it difficult to lecture other countries on the need for improved export controls, when one of our own legal frameworks is not in effect and still refers to such Cold War fixtures as the Soviet Bloc and the Coordinating Committee on Multilateral Export Controls, or COCOM.

The new bill provides some forward movement on issues of importance to industry, such as requiring the executive branch to seek multilateral agreement from other major exporters anytime the U.S.

imposes unilateral controls. It helps to clarify the concept of foreign availability, and to define when a product has become a "commodity" over which control is impractical.

On balance, we would support passage of S. 1712, with two reservations. Of special interest to our industry, we would like to see components and technical information related to safety of flight for civilian passenger aircraft exempted from foreign policy controls, along with food and medicine. We believe that when we sell a commercial aircraft, we should be able to help owners of such aircraft meet any safety recommendation made by the Federal Aviation Agency (FAA). Putting civilians at risk, both with respect to aircraft built by the U.S. or powered by our engines, whether they are riding in the aircraft, or on the ground, is neither humane nor politically sound policy.

We would also hope that passing an EAA would not discourage the next President and the next Congress from stepping back and examining the entire export control system. As I will note in a moment, over the long run, I believe the government must review whether it makes sense to have two legal frameworks, two sets of regulations, and two bureaucracies to administer our export control system. I do not believe it is in anyone's interest to defer this review for another five years.
Before looking at what such a review might encompass, let me touch briefly on what could be done to fix the current system as administered by the Department of State, specifically those items which are under the jurisdiction of the Arms Export Control Act or AECA. It seems to me that when you have a system as overloaded as that of the State Department seems to be, there are three things you can do, none of which are mutually exclusive. You can add financial and manpower resources, you can reduce the number of licenses, and you can increase the efficiency with which the resources are applied to the licenses. I believe we need to do all three.

Let me relate to you just a few examples of why we believe our current export controls system is broken and needs some short- term and long- term repair.

At the height of the Kosovo intervention the Department of State took more than two months to approve a license to sell 35 flares to the Italian Coast Guard. These were needed for illumination in the possible rescue of NATO pilots, the majority being American.

A couple years earlier the Dutch needed to install terrain map software in their U.S.- made helicopters in order to undertake their coalition mission in Bosnia. Again, even with "emergency" requests from the Dutch government, the licensing process took about two months.

A German assembly line of a U.S. missile produced under license was shut down because the license for export of a needed chemical from the U.S. was delayed. In fact, German irritation with our licensing process is such that managers in Daimler Chrysler Aerospace, or DASA, Germany's largest aerospace company, have been instructed to avoid purchasing American components for defense and space products. DASA's CEO has written to the Secretary of State explaining this action. I might note that DASA is in the process of merging with French and Spanish companies to form the world's fourth largest aerospace and defense company. Reducing their dependence on U.S. suppliers not only will restrict an important market for U.S. companies, but will also encourage new European and Asian entrants into markets currently dominated by those U.S. companies. Those new players will, in turn, compete in the U.S. domestic market.

Finally, 16 ambassadors from NATO countries have written to the Secretary of State expressing their deep frustration with the U.S. export control system, indicating it undercuts cross-Atlantic armaments cooperation. I suspect the Secretary has seldom found such agreement among our NATO allies on other subjects.

Attached to my testimony, please find a list of other examples.

Last year the Congress tried to bring more resources to bear by earmarking funds for the Office of Defense Controls and by authorizing State to increase the job grades of the personnel in that office. My understanding is that progress in meeting those Congressional recommendations has been slow. We hope that State will eventually comply.

Second, we would suggest examining at least four approaches that would reduce the time and expense of the licensing process, and assure government personnel are used only to review license applications that involve real policy issues:

X Program Licenses: When a license is granted for the sale of a specific end item, the license could also provide authority to allow a company to report after the fact on all subsequent shipments of spare parts and technical information related to the sale which do not alter the capabilities of the equipment. Companies could provide annual reports to State, and the government could, at any time, rescind the program license if circumstances warranted. If a foreign partner or customer should request technology or equipment outside the scope of the project license, the company would have to request separate license approval.

- Exempt Foreign Military Sales (FMS) and Cooperative Products from Licensing Requirements: When contractors are performing contracts pursuant to a government-to-government (FMS) sale or an international cooperative program under a Memorandum of Understanding, export licenses should not be needed (required) as long as the contractor is operating within the bounds of the government sales contract or the MOU.

- Eliminate Non-Lethal Support Systems from Munitions List: Currently, State licenses such non-lethal support equipment as hydraulics, electrical, fuel, and structures that, while specifically designed for a military system, are not inherently military technologies and could readily be modified from commercial products. These items are of no security interest to the armed forces, and could be eliminated from requirements for licenses.

- Delegate Licensing Authority: The Department of State could certify individuals in companies to issue licenses on behalf of the federal government for certain types of products, such as spare parts, technology or equipment required for a joint program, or other activities involving a relatively high volume of licenses with a minimum policy content. The Federal Aviation Agency (FAA) has such a program with aerospace manufacturers in which designated company employees are delegated authority on behalf of the FAA Administrator to perform certain inspection and certification responsibilities. Obviously, such companies would need to have a strong compliance record, and would be required to keep appropriate paperwork, provide notifications of decisions to the government, and be subject to government audit.

Finally, the executive branch should establish a common electronic data system for export licensing. Last year Congress set aside funds to do precisely that, but so far there has been no agreement among the agencies to get started. Consequently, under today's system, even if companies apply for an export license electronically to State, State then has to print the application and carry it by courier to DoD. DoD scans it into its electronic data system, distributes the application electronically within DoD, and collates responses. Once DoD finalizes its position, it has to print it once again, carry its recommendations to State. From there, they go to a typing pool, and eventually to the contractor. The final State licenses are never made available to DoD. Therefore, DoD has no record of the final license decision and its provisos.

So much for immediate measures which would help make the current system work far more efficiently and effectively. What would a review of the entire system entail? Such a review should start by asking just what we want to accomplish with export controls. There would seem to be three reasons for imposing export controls, with each covering a different, but often overlapping cluster of products:

- Arms: The subject of arms transfers involves security, foreign policy, and public perception. We wish to help our friends protect themselves; we also do not want to compromise U.S. weapons systems, or have them used against us. Unlike non-lethal equipment, even if we know countries will have a comparable capability, we may not want to make the equipment available from U.S. sources. Having U.S. weapons used against American troops, or in unpopular internal or external disputes, is unacceptable, even if there is no difference between the U.S. system and other foreign options. Furthermore, selling weapons is often regarded as an U.S. endorsement of a government. As a result, there will need to be specific statutory framework for weapons, however defined, with criteria different from other export control systems.

- National Security: During the Cold War, we wanted to prevent technology from reaching the Soviet Union which might assist its defense industry produce better weapons, even if that technology had legitimate civilian applications. Today, we still wish to withhold certain technology from Russia, but also from other states in which technology might be used for such purposes as the design and production of conventional or unconventional weapons and delivery systems. However, if a technology is widely available from other uncontrolled sources, it makes little sense to deny Americans the ability to export. Moreover, selling commercial products to a country carries less emotional baggage than selling weapons. Thus, a new system will presumably need some controls focused on security, but with greater emphasis on multilateral controls and industry safeguards than is true for weapons.

- Foreign Policy: The U.S. has historically imposed controls for foreign policy reasons as a means of pressuring, or punishing other countries. This has ranged from nearly complete embargoes lasting decades, to short- lived sanctions such as those placed on grain sales to the Soviet Union. Most analysts believe foreign policy export controls are almost always ineffective in accomplishing policy objectives while being economically costly, particularly when controls are imposed on a unilateral basis. A new legal framework would almost

certainly include provisions for such controls, but these should be sharply limited with the kind of safeguards contained in the EAA.

Currently, the Arms Export Control Act (AECA) provides the statutory framework for controls of weapons systems, while the Export Administration Act (EAA) is basically responsible for commercial commodities. Yet, the last Congress transferred a clearly commercial product, communications satellites, back to the munitions list as if it were a weapons system. On the other hand, foreign policy controls, which one might think were the province of the State Department, are administered by Commerce. Both State and Commerce rely on the Department of Defense for advice on technical matters. Indeed, most of the 45,000 licenses the Department of State issues each year have little to do with foreign policy concerns with arms sales, but rather technical concerns with the transfer of weapons, parts, and technology. The blurring of the distinctions among weapons, technology, and foreign policy is likely to become even more complex in the years ahead. This naturally leads to the question whether current law, including a modified EAA, is still appropriate.

I mentioned that during the 105th Congress a clearly commercial product, communications satellites, was transferred to the munitions list of weapons systems. This move has had a devastating impact on the satellite industry. While some Members of Congress may have intended to only restrict sales of satellites to China, our satellite sales and business relations all over the world, including with our NATO and other allies are suffering greatly. Satellite sales abroad have dropped 40 percent in the last year. The U.S share of the global market dropped from 72 to 65 percent this year. If the current system is not changed immediately, every indication is that this downward trend will continue.

**Legal Framework:**

Several laws currently provide the statutory framework for export controls. In addition, to the EAA and the AECA, the Trading with the Enemy Act and the International Emergency Economic Powers Act (IEEPA) are also used to control exports and international transactions.

These laws come under separate jurisdictions in the Congress, and are not necessarily under parallel committees (e.g., the EAA is under the House International Relations Committee and the Senate Banking Committee). The laws are not always mutually consistent, and ascribe primary administrative authority to different agencies. A strong argument can be made that in the long run all export and financial controls ought to be consolidated under a single permanent act.

**Administration:**

Currently, the Department of State administers the AECA; Commerce the EAA; Treasury oversees the Trading with the Enemy Act; Treasury and Commerce administer the IEEPA. This has resulted in overlapping and confusing regulatory systems, often for the same goods, technology, and services. It has also led to unique and duplicative licensing forms, administrative staffs, and computer systems. Congress might examine whether a one agency could serve as a single administrative shop for all export licenses. This would provide industry with a consistent, more user-friendly regulatory system, a "one-stop shop" for license applications, and hopefully lead to a single computer system and reduced number of forms and data collection.

Assigning the responsibility to receive and process license applications to one bureaucracy would in no way be intended to alter the policy responsibility, or involvement of specific types of license applications. Statute and executive order could clearly delineate which agency had primary responsibility for policy for each type of export license, which agencies had a right to participate in the license decision process, and how disputes among agencies would be resolved.

In summary, the aerospace industry would support an updated EAA along the lines of the current Senate draft. However, such a bill ought to be passed for perhaps a two- or three- year period, with the clear understanding that during that timeframe the executive branch and the Congress would review all existing export control legislation, including the Arms Export Control Act (AECA), The Trading with the Enemy Act and the International Emergency Economic Powers Act (IEEPA). The intention should be to help lay the groundwork to revise all export control legislation, perhaps in a single act, to meet the requirements of the next century. Even more important, however, Congress should urge the administration to take immediate steps to improve the current export controls system as administered by the State.

AIA hopes that the above comments provide an overview to help Members in their deliberations on the merits of S. 1712 and improvement of the current munitions control system. Let me also urge Members to participate in future deliberations on new legislation that would structure a more effective and economically sound export control system for the 21st century.